

<p>DISTRICT COURT CITY AND COUNTY OF BOULDER, COLORADO</p> <p>Boulder County Justice Center 1777 6<sup>th</sup> Street Boulder, Colorado 80302</p> <hr/> <p><b>Plaintiff:</b></p> <p>JEFFERY HOWELL., an individual.</p> <p><b>Defendants:</b></p> <p>KEVIN LAMAR, an individual; JOSHUA STANLEY, an individual; and NUTRITIONAL SUPPLEMENTS, a Colorado limited liability company.</p> <hr/> <p><b>Attorneys for Plaintiff:</b></p> <p>THE LAW OFFICES OF ERIC J. MOUTZ, LLC. Eric J. Moutz, #34617 4450 Arapahoe Ave. Boulder, Colorado 80302 Telephone: (303) 440-3923 Facsimile: (888) 275-4089 E-mail: eric@moutzlaw.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: _____</p> <p style="text-align: center;">Courtroom</p>
<p><b>COMPLAINT</b></p>	

Plaintiff Jeffery Howell ("Howell" or "Plaintiff") hereby files the following Complaint against the Defendants Kevin Lamar ("LaMar"), Joshua Stanley ("Stanley") and Nutritional Supplements, LLC ("NS"). Lamar, Stanley, and NS are collectively referred to herein as the "Defendants."

## I. INTRODUCTION

1. This is an action by the Howell to recover compensation for labor and money that he invested in NS at the behest of Lamar and Stanley. Specifically, Lamar and Stanley promised Howell a thirty three percent (33%) interest in NS in exchange for Howell's investment of labor in the company. In addition, Lamar and Stanley asked Howell to advance approximately \$61,000 of his own money to the Defendants for various business purposes. Lamar and Stanley never transferred any interest in NS to Howell and, upon information and belief, never intended to do so. Ultimately, Lamar

and NS ran afoul of various regulations imposed by the Colorado Department of Revenue, Marijuana Enforcement Division (the "MED") and Lamar was personally named in several lawsuits alleging various misconduct in connection with his business. As a consequence, Lamar has entered into an agreement to sell NS to a third party but has failed but Defendants have refused to pay Howell for his work, reimburse him for his expenses, or share in the value they will receive from the sale of NS. Howell has filed this lawsuit to ensure that he is compensated for his investment of time and money.

## **II. PARTIES**

2. Plaintiff Jeffery Howell is an individual who resides in Boulder county, Colorado.

3. Defendant Lamar is an individual who, upon information and belief, resides in Denver, Colorado. Upon information and belief Kevin Lamar was an owner, manager, and/or employee of Defendant Nutritional Supplements, LLC at all times material to the allegations of this Complaint.

4. Defendant Stanley is an individual who, upon information and belief, resides in Denver, Colorado.

5. Defendant Nutritional Supplements is a Colorado limited liability company with its principal place of business in Boulder, Colorado.

## **III. JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court because all of the parties are Colorado residents.

5. Venue is proper in this Court pursuant to C.R.C.P. 98 (c) because, among other things, this action concerns a contract for services which were to be at least partially provided in Boulder County and Defendant Nutritional Supplements, LLC is a resident of Boulder County.

## **IV. GENERAL ALLEGATIONS**

6. Stanley was one of the first individuals in the state of Colorado to found a medical marijuana dispensary. Howell contacted Stanley, who was a childhood friend, to discuss becoming involved in the medical marijuana business. Because of Howell's long term relationship with Stanley, and Stanley's expertise in the medical marijuana industry, Howell trusted Stanley as a potential business partner and advisor.

7. In January of 2013 Stanley and Howell discussed a potential business opportunity. Stanley told Howell that his business had been robbed and that Stanley was "sick of dealing with people he did not know" in the industry and wanted to work with people, like Howell, who he knew and trusted. Stanley then offered Howell the opportunity to join in a business partnership with himself and his partner, Mr. Kevin



Lamar, who is a former professional football player and former chief executive officer of Schwinn bicycles and various other public and private companies.

8. Specifically, Stanley suggested that Howell should run a medical marijuana cultivation facility (known in the industry as an "off premises cultivation site" or "OPC") on behalf of Stanley and his business partner, Kevin Lamar, and their company, NS. Stanley offered to pay Howell as a consultant to operate this OPC.

9. In these discussions, Stanley represented that he was speaking on behalf of not only himself, but also as the agent of Lamar and NS, and Howell reasonably believed that this was the case. This understanding was confirmed by Howell's interactions with Lamar, in which Lamar acted and spoke in a manner consistent with Stanley's representations to Howell.

10. In reliance on Stanley's promises, Howell worked on behalf of Stanley and Lamar to locate warehouse space that would be suitable for an OPC. Howell ultimately located warehouse space in Englewood, Colorado (the "Englewood Facility") which NS leased on April 13, 2013 (the "Englewood OPC Lease"). Howell personally guaranteed this lease at the urging of Lamar and Stanley and, when NS failed to make payments due under the Englewood OPC Lease, personally paid rent and other expenses associated with the Englewood Facility based on the express representations of Lamar and Stanley that he would be reimbursed by them or by NS for all of these expenses.

11. Around June of 2013 Lamar and Stanley began to include Howell in company meetings, introduce him to employees of the company, and to treat him as an advisor and consultant to the company on all business matters.

12. At around the same time, NS was preparing to open three additional and independently licensed OPCs in New Castle, Colorado (the "New Castle OPCs") to serve three independently licensed subsidiaries of NS.

13. Lamar and Stanley asked Howell to review the condition of the New Castle OPC in June, 2013. The New Castle OPCs were in very poor condition. In addition, one of the employees of the New Castle OPCs "lost" \$20,000 in cash which made it difficult for NS to pay bills owed to a third party, Mr. John Burney.

14. Immediately thereafter, Stanley requested that Howell discontinue his efforts to build out and operate the Englewood OPC and, instead, invest his time and money in the New Castle OPCs. Stanley promised that Defendants would repay Howells' investment in the Englewood OPC and that Howell would receive a thirty three percent (33%) of NS and of the income NS and its subsidiaries generated from the Englewood OPCs.

15. These promises were later confirmed verbally by Lamar on behalf of himself and NS. Lamar's confirmation of Stanley's representations supported Howell's view that Stanley was acting as an agent of NS and Lamar during their interactions.

16. In reliance on Stanley and Lamar's promise, Howell paid \$20,000 of his own money to Mr. Burney on June 20, 2013 on behalf of the Defendants.

17. In reliance on Stanley and Lamar's promise, Howell discontinued efforts to develop the Englewood OPC.

18. Also in reliance on Stanley and Lamar's promises, Howell gave up his lucrative job as a mortgage broker to work full time with Defendants as a consultant, advisor, and grower, and effectively as an owner of NS.

19. In these capacities, Howell took over managing and operating the New Castle OPCs. At various times Howell performed services for Defendants in connection with this work including, but not limited to, the following:

- a. Developing a comprehensive plan for resource allocation, crop forecasting, cultivation methodology;
- b. Purchasing supplies and materials;
- c. Researching cultivation methods and best practices for operating commercial marijuana cultivation facilities;
- d. Managing updates to the security systems which served the New Castle OPCs;
- e. Correcting regulatory violations including inadequate digital video recording and transmission systems, all as required by state and local laws and regulations; and
- f. Developing cost and income projects for the New Castle OPCs; and
- g. Operating the New Castle OPCs on a daily basis.

20. Howell also consulted with Stanley and Lamar concerning issues of strategy concerning NS, including financing, obtaining outside investors, and capital requirements for the business.

21. All told, Howell expended over \$60,000 of his own money on behalf of Defendants.

22. Howell has never received any pay for his services and was never reimbursed for any of his out of pocket expenses.

23. On or around July 12, 2013 (and without informing Howell) Lamar entered into a letter of intent with third party Wendi Bagi to sell sixty percent (60%) of the outstanding membership interests in NS to Ms. Bagi (the "LOI").

24. Under the heading "current debt" the LOI acknowledged a debt of \$40,000 to Howell and provided for payment of that debt.



25. Although the LOI's provision for payment of Howell was inadequate, Stanley and Lamar promised that Howell would be permitted to continue working after NS was sold to Laszlo Bagi on terms identical to those offered to him by Stanley and Lamar and that Howell would realize substantial profit from his continued employment with NS.

26. The payments contemplated by the LOI were never made and Howell was not permitted to continue working for NS.

27. In December, 2013 the MED issued a notice to show cause by NS's licenses to operate as a medical marijuana business should not be revoked due to various misconduct involving Stanley and Lamar, including Lamar's alleged operation of an illegal marijuana grow.

28. The MED later took the position that because of this alleged wrongdoing, NS could not retain its license to cultivate medical marijuana if Stanley or Lamar were owners of the business. The MED also objected to Laszlo Bagi's continued involvement with NS after Mr. Bagi's interests in other businesses became the subject of a well-publicized criminal investigation.

29. In an effort to settle NS's dispute with the MED, and preserve the substantial value represented by NS and its licenses, Lamar and Stanley made the decision to sell NS to a third party with the approval of the MED. Thereafter, Lamar and Stanley began making efforts to locate a buyer for NS.

30. In January, 2014 Lamar acknowledged in an email to a third party broker that the current outstanding debts of NS included \$40,000 due to Howell.

31. In an email dated January 13, 2014 Howell objected the payment of \$40,000 as inadequate given that he expended over \$60,000 in pocket expenses as well as substantial time and effort on behalf of the Defendants.

32. Howell engaged in discussions directly with Stanley concerning this situation. During these discussions Howell understood Stanley continued to act as the agent of Lamar and NS. In these discussions, Howell threatened legal action unless Stanley agreed to compensate Howell for his time and out of pocket expenses.

33. On or around February 18, 2014 Stanley, speaking on behalf of NS and Lamar, agreed to pay Howell \$60,000 to settle Howell's claims. Stanley represented to Howell in a text message that "[Lamar] just confirmed your \$60,000 with the people were [sic] trying to write a contract with and they agreed. So I don't know what your issue is."

34. Howell continued to press Stanley for a definitive statement that he would be paid. In response, Stanley, again speaking on behalf of NS and Lamar, stated in a

text message to Howell that "You WILL get your money back period. ... You'll get your 60k jeff."

35. On February 25, 2014 Stanley again confirmed his intention to pay Howell, stating "we are trying to sell the business [NS]. You will get your money back when we sell it. How clear can I be on that Jeff? I'm out to get away from all this Jeff not screw anyone over."

36. On February 28, 2014 Stanley confirmed that another letter of intent had been signed to sell NS to a third party and that he "hope[d] to have [Howell] straight soon."

37. Thereafter, Howell requested that Defendants execute a formal settlement agreement providing for payment of the \$60,000 agreed to by Stanley. Defendant Lamar refused to execute that settlement agreement.

38. Upon information and belief, Stanley and Lamar have entered into a contract with a third party to sell some or all of the assets of NS.

39. Howell has still not received reimbursement of his expenses or payment for his work.

40. Counsel for Defendants Stanley, Lamar, and NS has refused to timely respond to inquiries from Howell and his counsel regarding the status of the proposed sale of NS and its assets and payment of the amounts owed to Howell.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**  
**(Against All Defendants)**

41. Plaintiff incorporates the allegations of the preceding paragraphs of the Complaint as if fully set forth herein.

42. Defendants agreed to reimburse Howell for the expenses he incurred on behalf of NS and at their request.

43. Defendants agreed to compensate Howell for his expenditures of time and money with a thirty three percent (33%) interest in the value represented by NS and a thirty three percent (33%) interest in income derived from the New Castle OPCs.

44. Defendants agreed to settle Howell's claim for sixty thousand dollars (\$60,000).

45. Defendants have breached their obligations by failing to make any payments to Howell.



46. Defendants are liable to Howell for breach of contract in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF**  
**(Unjust Enrichment)**  
**(Against all Defendants)**

47. Plaintiff incorporates the allegations of the preceding paragraphs of the Complaint as if fully set forth herein.

48. Howell contributed money and labor on behalf of Defendants in reliance on the promises and agreements described herein.

49. Howell's money and labor Howell conferred a material benefit on all of the Defendants.

50. The Defendants have wrongfully retained the benefits conferred upon them as a consequence of Howell's contributions of labor and capital.

51. It would be unjust to permit the Defendants to retain the benefits conferred upon them without repaying the Plaintiff.

52. As a result of Howell's efforts, NS grew to become a valuable and successful business.

53. Defendants are liable to Plaintiff in an amount equal to the greater of the actual value of his contributions of capital and money, or an equitable percentage of the value of NS and the income it has generated at the New Castle OPCs, all to be determined at trial.

**THIRD CLAIM FOR RELIEF**  
**(Promissory Estoppel)**

54. Plaintiff incorporates the allegations of the preceding paragraphs of the Complaint as if fully set forth herein.

55. Stanley, acting as an agent of the other Defendants, promised Howell a thirty three percent (33%) interest in the value of NS and the income generated by NS.

56. Stanley, acting as an agent of the other Defendants, promised Howell that he would be repaid all amounts expended on behalf of the Defendants.

57. Stanley, acting as an agent of the other Defendants, should have reasonably expected that his promises would be reasonably relied upon by Howell.

58. Howell did, in fact, reasonably rely upon these promises by working and paying money on behalf of the Defendants.

59. As set forth above, Defendants have not honored the promises made by Stanley.

60. Howell has been damaged as a proximate result of his justifiable reliance on Stanley's promises.

61. Stanley's promises must be enforced to prevent injustice.

#### **FOURTH CLAIM FOR RELIEF** **(Fraud)**

62. Plaintiff incorporates the allegations of the preceding paragraphs of the Complaint as if fully set forth herein.

63. Stanley, acting as an agent of the other Defendants, promised Howell a thirty three percent (33%) interest in NS and the income generated by NS from the New Castle OPCs.

64. Stanley, acting as an agent of the other Defendants, promised Howell that he would be repaid all amounts expended on behalf of the Defendants.

65. Stanley, acting as an agent of the other Defendants, should have reasonably expected that his promises would be reasonably relied upon by Howell.

66. Howell did, in fact, reasonably rely upon these promises by working and paying money on behalf of the Defendants.

67. Upon information and belief, neither Stanley nor the other Defendants intended to honor the foregoing promises at the time they were made.

68. Neither Stanley nor the other Defendants have, in fact, honored their promises.

69. Howell has been damaged as a proximate result of his justifiable reliance on Stanley's promises in an amount to be determined at trial.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff asks that the Court enter judgment in his favor and against Defendants as follows:

1. Damages in an amount to be determined at trial;



2. Prejudgment and post judgment interest;
3. For all costs and expenses, including attorneys' fees, incurred in this action to the extent permitted by law; and
4. For such other and further relief as the Court deems just and equitable.

Respectfully submitted this 26<sup>th</sup> day of June, 2014.

THE LAW OFFICES OF ERIC J. MOUTZ, LLC.



By: \_\_\_\_\_

Eric J. Moutz (Atty. Reg. #34617)

ATTORNEY FOR PLAINTIFF